

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN H. BURNS, JR.; ROBERT E.
BRAZZANOVICH; CONSTANCE A.
DAVIS; JULIO AYALA; LAURA
GONZALEZ; THOMAS NOEL; PAUL
CHRISTENSEN; and DONNA
HUSTACE,

Plaintiffs,

v.

LIBERTY UTILITIES CO., a Delaware
Corporation; WESTERN WEATHER
GROUP, INC., a California Corporation;
and DOES 1 through 200, inclusive,

Defendants.

No. 2:21-cv-00647-TLN-KJN

ORDER

This matter is before the Court on Plaintiffs John H. Burns, Jr., Robert E. Brazzanovich, Constance A. Davis, Julio Ayala, Laura Gonzalez, Thomas Noel, Paul Christensen, and Donna Hustace's (collectively, "Plaintiffs") Motion to Remand. (ECF No. 6.) Defendant Liberty Utilities Co. ("Liberty") opposes the motion. (ECF No. 14.) Defendant Western Weather Group, Inc. ("Western Weather") did not file an opposition. Plaintiffs filed a reply. (ECF No. 16.) Also before the Court is Liberty's Motion to Strike (ECF No. 17) and Western Weather's Motion to Dismiss (ECF No. 18). Both motions have been fully briefed. For the following reasons, the Court GRANTS Plaintiffs' motion and REMANDS the action to state court.

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 Plaintiffs are homeowners, renters, business owners, and other individuals and entities
3 who lost property from the Mountain View Fire. (ECF No. 1-3 at 2.) Liberty is an electrical
4 services provider in Mono County. (*Id.*) Western Weather consults with utility companies —
5 including Liberty — and addresses weather risks with product solutions such as meteorological
6 monitoring systems and custom weather forecasting services to mitigate risks of wildfires caused
7 by the utility infrastructure. (*Id.* at 3–4.)

8 Plaintiffs allege the Mountain View Fire started when non-insulated electrical conductors
9 owned and operated by Liberty slapped together, causing electrical arcing that ignited nearby
10 vegetation. (*Id.* at 1.) Plaintiffs allege this occurred because: (1) Liberty’s infrastructure
11 (including, but not limited to, its electrical conductors) was intended, designed, and constructed to
12 pass electricity through exposed, non-insulated powerlines in vegetated areas; (2) Liberty
13 negligently, recklessly, and willfully failed to properly, safely, and prudently inspect, repair,
14 maintain and operate the electrical equipment in its utility infrastructure; and (3) Liberty and
15 Western Weather negligently, recklessly, and willfully failed to properly and safely monitor the
16 wind conditions in and around Walker, California during a National Weather Service Red Flag
17 warning, and failed to initiate a Public Safety Power Shutoff (“PSPS”) that resulted in the ignition
18 of the Mountain View Fire. (*Id.* at 1–2.)

19 On February 19, 2021, Plaintiffs filed this action against Liberty and Western Weather in
20 Mono County Superior Court. (ECF No. 1-3.) Plaintiffs allege state law claims for inverse
21 condemnation, trespass, nuisance, violation of California Public Utilities Code § 2106, violation
22 of California Health & Safety Code § 13007, and negligence. (*Id.*) On April 9, 2021, Liberty
23 removed the action to this Court based on diversity jurisdiction, even though the named parties
24 are not completely diverse. (ECF No. 1.) In its Notice of Removal, Liberty contends there is
25 complete diversity because Plaintiffs are citizens of California or Nevada, Liberty is incorporated
26 in Delaware with its principal place of business in Arizona, and Western Weather — despite
27 being a California corporation — is a “sham defendant” whose presence cannot defeat diversity.
28 (*Id.* at 2, 8.) On May 10, 2021, Plaintiffs filed the instant motion to remand. (ECF No. 6.) On

1 June 8, 2021, Plaintiffs filed a First Amended Complaint (“FAC”).¹ (ECF No. 9.)

2 **II. STANDARD OF LAW**

3 A civil action brought in state court, over which the district court has original jurisdiction,
4 may be removed by the defendant to federal court in the judicial district and division in which the
5 state court action is pending. 28 U.S.C. § 1441(a). The district court has jurisdiction over civil
6 actions between citizens of different states in which the alleged damages exceed \$75,000. 28
7 U.S.C. § 1332(a)(1). Removal based on diversity requires that the citizenship of each plaintiff be
8 diverse from the citizenship of each defendant (i.e., complete diversity). *Caterpillar Inc. v.*
9 *Lewis*, 519 U.S. 61, 68 (1996). For purposes of diversity, a corporation is a citizen of any state in
10 which it is incorporated and any state in which it maintains its principal place of business. 28
11 U.S.C. § 1332(c)(1). An individual defendant’s citizenship is determined by the state in which
12 they are domiciled. *Weight v. Active Network, Inc.*, 29 F. Supp. 3d 1289, 1292 (S.D. Cal. 2014).

13 “[I]n a case that has been removed from state court to federal court under 28 U.S.C. §
14 1441 on the basis of diversity jurisdiction, the proponent of federal jurisdiction — typically the
15 defendant in the substantive dispute — has the burden to prove, by a preponderance of the
16 evidence, that removal is proper.” *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel.*
17 *Lhotka*, 599 F.3d 1102, 1106–07 (9th Cir. 2010). “The preponderance of the evidence standard
18 applies because removal jurisdiction ousts state-court jurisdiction and ‘must be rejected if there is
19 any doubt as to the right of removal in the first instance.’” *Id.* (citation omitted). “This gives rise
20 to a ‘strong presumption against removal jurisdiction [which] means that the defendant always
21 has the burden of establishing that removal is proper.’” *Id.* (citation omitted).

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25 ¹ The parties dispute whether the Court should decide the motion to remand based on the
26 allegations in the FAC or the original Complaint. The Court likely would reach the same result
27 under either version of the pleading. However, because diversity is determined as of the time a
28 complaint is filed and removal effected, the Court will only address the allegations in the original
Complaint and will not address the parties’ dispute about the propriety of the FAC. *Stroken
Corp. v. Air Transp. Ass’n of Am.*, 300 F.3d 1129, 1131 (9th Cir. 2002).

1 **III. ANALYSIS**2 **A. Remand**

3 In moving to remand, Plaintiff argues there is not complete diversity because some
 4 Plaintiffs and Western Weather are citizens of California. (ECF No. 6-1 at 3–4.) In opposition,
 5 Liberty argues the Court should disregard Western Weather’s citizenship because Plaintiffs
 6 fraudulently joined Western Weather to defeat diversity. (ECF No. 14 at 5.)

7 “[D]istrict courts may disregard the citizenship of a non-diverse defendant who has been
 8 fraudulently joined.” *Grancare, LLC v. Thrower by and through Mills*, 889 F.3d 543, 548 (9th
 9 Cir. 2018). However, “[a] defendant invoking federal court diversity jurisdiction on the basis of
 10 fraudulent joinder bears a ‘heavy burden’ since there is a ‘general presumption against [finding]
 11 fraudulent joinder.’” *Id.* (citation omitted). Fraudulent joinder may be established by showing
 12 either: “(1) actual fraud in the pleading of jurisdictional facts[;] or (2) inability of the plaintiff to
 13 establish a cause of action against the non-diverse party in state court.” *Id.* Proving the second
 14 theory requires a defendant to show that an “individual joined in the action cannot be liable on
 15 any theory.” *Id.* (citation omitted). “[A] federal court must find that a defendant was properly
 16 joined and remand the case to state court if there is a *possibility* that a state court would find that
 17 the complaint states a cause of action against any of the [non-diverse] defendants.” *Id.* (citation
 18 and internal quotation marks omitted) (emphasis in original).

19 Liberty argues Plaintiffs fail to state a viable cause of action against Western Weather in
 20 the Complaint for several reasons, including that Western Weather simply sold weather
 21 monitoring equipment to Liberty, had no role in monitoring weather conditions, and did not own,
 22 operate, or control the circuit that allegedly caused the fire. (ECF No. 14 at 5, 9.) Liberty has not
 23 persuaded the Court that there is *no possibility* Plaintiffs can bring a viable claim against Western
 24 Weather. *See Grancare, LLC*, 889 F.3d at 548 (“We have upheld rulings of fraudulent joinder
 25 where a defendant demonstrates that a plaintiff is barred by the statute of limitations from
 26 bringing claims against that defendant. . . [or] where a defendant presents extraordinarily strong
 27 evidence or arguments that a plaintiff could not possibly prevail on her claims against the
 28 allegedly fraudulently joined defendant.”). For example, Plaintiffs allege in Claim Six of the

1 Complaint that Western Weather was negligent for, among other things, “[f]ailing to properly
2 monitor the weather and promptly de-energize exposed powerlines during fire-prone conditions.”
3 (ECF No. 1-3 at 14.) Although Plaintiffs’ allegations may be insufficient to state a plausible
4 claim for relief, “merely showing that an action is likely to be dismissed against that defendant
5 does not demonstrate fraudulent joinder.” *Diaz v. Allstate Ins. Grp.*, 185 F.R.D. 581, 586 (C.D.
6 Cal. 1998). Moreover, Liberty’s attempts to refute Plaintiffs’ allegations are unavailing. “The
7 standard is not whether plaintiffs will actually or even probably prevail on the merits, but whether
8 there is a possibility that they may do so.” *Id.* (citation omitted). Lastly, Liberty has not
9 persuaded the Court that any purported deficiencies in the pleading cannot possibly be cured by
10 granting leave to amend. *See Grancare, LLC*, 889 F.3d at 550.

11 Because it is undisputed that Western Weather is a California corporation — and Liberty
12 has not met its heavy burden to show Western Weather was fraudulently joined — there is not
13 complete diversity between the parties. As such, removal to this Court was improper. The Court
14 therefore REMANDS this action to Mono County Superior Court.

15 B. Attorney’s Fees

16 Plaintiffs also argue they are entitled to attorney’s fees incurred in bringing the instant
17 motion to remand. (ECF No. 6-1 at 6.) “An order remanding the case may require payment of
18 just costs and any actual expenses, including attorney fees, incurred as a result of removal.” 28
19 U.S.C § 1447(c). “Absent unusual circumstances, courts may award attorney’s fees under §
20 1447(c) only where the removing party lacked an objectively reasonable basis for seeking
21 removal.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). Here, the Court cannot
22 say that Defendant “lacked an objectively reasonable basis for seeking removal.” *Id.* Liberty
23 raised reasonable arguments regarding fraudulent joinder. Further, although Liberty fails to
24 persuade the Court that Plaintiffs cannot *possibly* state a viable claim against Western Weather,
25 the Court notes that the allegations in the Complaint regarding Western Weather’s liability could
26 be clearer. The Court thus DENIES Plaintiffs’ request for attorney’s fees.

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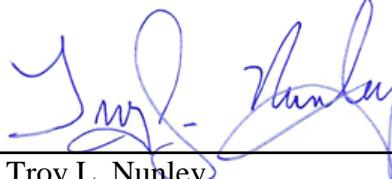
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1 **IV. CONCLUSION**

2 For the reasons discussed above, the Court GRANTS Plaintiffs' Motion to Remand and
3 REMANDS the case to Mono County Superior Court. (ECF No. 6.) The Court declines to award
4 Plaintiffs attorney's fees incurred in bringing this motion.

5 IT IS SO ORDERED.

6 DATED: January 04, 2022



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8 Troy L. Nunley
9 United States District Judge

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